No. 92-1955

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1993

BEATTA BLOMQUIST, ADVANCE DEVELOPERS, INC., CLIFF ROAD PROPERTIES, HOFFMAN DEVELOPMENT GROUP, INC., HDG ASSOCIATES LIMITED PARTNERSHIP, EAGAN ASSOCIATES LIMITED PARTNERSHIP, CRP OF EAGAN, INC., ROBERT L. HOFFMAN, PATRICK C. HOFFMAN, JACK F. DALY, JR., FEDERAL LAND COMPANY, EAGAN TOWER OFFICE BUILDING PARTNERSHIP, AND EAGAN HEIGHTS COMMERCIAL PARK,

Petitioners,

vs.

BIETER COMPANY, DORSEY & WHITNEY, AND RYAN CONSTRUCTION COMPANY OF MINNESOTA, INC.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENT BIETER COMPANY'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Did the Court of Appeals err in finding that plaintiff Bieter Company, a commercial real estate developer, suffered injury to its business or property, as required by 18 U.S.C. § 1964(c), based on damages arising from the loss of an anchor tenant and shopping center development caused by defendants' predicate acts of bribery and other illegal activity.

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For The Eighth Circuit

RESPONDENT BIETER COMPANY'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent Bieter Company respectfully submits this brief in opposition to Petitioners' request that this

Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinions and orders below are cited in the Petition for Writ of Certiorari ("Petition") and reprinted in Petitioners' Appendix ("Pet. App.").

JURISDICTION

The Court's jurisdiction was properly invoked, pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

18 U.S.C. § 1964(c) which provides:

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

STATEMENT OF THE CASE

This litigation arises from an extensive scheme of bribery of municipal officials which corrupted the municipality's consideration of two rival shopping center proposals. Through a concerted series of illegal acts,

petitioners thwarted plaintiff's proposed shopping center development, lured away plaintiffs' committed anchor tenant and obtained approval for a rival shopping center development. Having found sufficient evidence of multiple acts of bribery by petitioners and of monetary damage suffered by plaintiff, the Court of Appeals remanded this case for completion of discovery and trial.

FACTUAL BACKGROUND

In 1986, plaintiff Bieter Company proposed to develop a large shopping center in Eagan, Minnesota, the fastest growing suburb of Minneapolis/St. Paul. Plaintiff proposed this development after it had obtained the commitment of Target Stores to be an anchor tenant. Target Stores is a division of Dayton Hudson Corporation and the leading discount retailer in Minnesota. Plaintiff's proposal faced fierce and coordinated opposition from Eagan's two largest commercial real estate developers, the Hoffman defendants and the Federal defendants.[1] The Federal and Hoffman defendants wanted to stop a Target-based shopping center at plaintiff's site and to gain approval for a Target-based shopping center on land owned by the Hoffman defendants and adjacent to land

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[1] The Hoffman defendants are a group consisting of Petitioners Advance Developers, Inc., Cliff Road Properties, Hoffman Development Group, Inc., HDG Associates Limited Partnership, Eagan Associates Limited Partnership, CRP of Eagan, Inc., Robert L. Hoffman, Patrick C. Hoffman, and Jack F. Daly, Jr. The Federal defendants are a group consisting of Petitioners Federal Land Company, Eagan Tower Office Building Partnership, and Eagan Heights Commercial Park.

owned by the Federal defendants. The Hoffman and Federal defendants had a powerful ally in their efforts to stop plaintiff's proposed development and to lure Target to the Hoffman defendants' site: Defendant Beatta Blomquist, who was then mayor of Eagan and chair of the five member City Council.

The Court of Appeals determined there is sufficient evidence for a jury to conclude that defendant Blomquist was bribed by the Federal defendants through favorable leases and the write-off of thousands of dollars of unpaid past due rent, and by the Hoffman defendants through the creation and operation of sham political committees supporting Blomquist in her 1987 mayoral campaign. The Court of Appeals also determined there was sufficient evidence for a jury to conclude that Blomquist used her significant authority to stop plaintiff's proposed development and to ensure that a Target-anchored center was constructed on the Hoffman defendants' property. The Court of Appeals further held that there was sufficient evidence to show that the Federal defendants had bribed two other members of the Eagan City Council, James Smith and Theodore Wachter, by providing them, respectively, free trips and construction contracts. It also found evidence of additional predicate acts including witness bribery and tampering in the course of this litigation.

This bribe-induced public corruption caused the denial in February 1987 of plaintiff's application to build its proposed shopping center and the December 1987 approval of the Hoffman defendants' development by a lame duck city council in which defendant Blomquist cast the critical vote. As a direct result of petitioners' illegal activity, plaintiff's committed anchor, Target Stores,

switched to the Hoffman defendants' project. Having been stripped of its committed anchor tenant, plaintiff could not proceed with its development since the City of Eagan had a policy that rezoning applications would be considered only if the applicant had a committed anchor tenant. A Target-anchored shopping center now sits on the Hoffman site and plaintiff lost millions of dollars as the direct result of defendants' illegal activity.

PROCEDURAL BACKGROUND

The Amended Complaint was filed in June 1991 asserting two counts based on the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 (1988) (RICO), and state law claims for tortious interference with business relations. While the action was originally commenced in November 1989, the evidence of bribery leading to the current RICO claims was obtained during the course of discovery.

Long prior to the conclusion of discovery, defendants filed motions for summary judgment in November 1991. The District Court granted defendants' motion for summary judgment on February 18, 1992. The District Court held there was sufficient evidence of bribery of defendant Blomquist. The District Court also held, however, that evidence that the Federal defendants bribed other city council members was not sufficient to go to the jury and that plaintiff's failure to reapply for zoning, after its application had been rejected and the Hoffman development was approved with one of plaintiff's principal anchor tenants, prevented plaintiff from sustaining "the sort of

actual, concrete injury necessary to establish a cognizable injury under the RICO Act." 784 F.Supp. at 1414.

By Order dated April 3, 1992, the District Court denied plaintiff's motion for reconsideration, to alter or amend judgment, or to amend or make additional findings filed pursuant to Fed.R.Civ.P. 52 and 59. On May 1, 1992, plaintiff filed its notice of appeal in the United States Court of Appeals for the Eighth Circuit.

In a decision dated March 8, 1993, the Court of Appeals reversed the District Court's entry of summary judgment in defendants' favor. *Bieter Co. v. Blomquist*, 987 F.2d 1319 (8th Cir. 1993). In reversing, the Court of Appeals recognized what the District Court ignored: Plaintiff was faced with the City of Eagan policy that rezoning applications would be considered only if the applicant had identified, committed users. *Id.* at 1323. "The users included in [plaintiff's] initial application were, of course, no longer interested as they had entered into agreements with the Cliff Lake development. [Plaintiff] has been unable to find comparable users, and consequently has not reapplied for rezoning." *Id.*

With respect to the issue raised in defendants' Petition, the Court of Appeals, noting this Court's decision in *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985), held that "[r]ather than impart a standing requirement from the realm of regulatory takings, the district court should have looked to similar cases in the RICO setting." 987 F.2d at 1328. *See Environmental Tectonics v. W.S. Kirkpatrick, Inc.*, 847 F.2d 1052 (3d Cir. 1988), *aff'd on other grounds*, 493 U.S. 400, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990). Likening civil RICO to a

statutory tort remedy, the Court of Appeals concluded that plaintiff had suffered an injury to its "business or property" as required under 28 U.S.C. § 1964(c), and as this Court and Courts of Appeal have interpreted the meaning of injury to "business or property." According to the Court of Appeals,

> [v]iewing the facts in the light most favorable to [plaintiff] it had a development proposal that, but for the corruption of various public officials, would have been approved. Despite its candidates having won in the 1987 election, the loss of its committed anchor tenant made reapplication for rezoning futile. It has not suffered a taking – its property has not lost all value – but it has lost what likely would have been the most valuable use of its property, and that loss is attributable to the defendants' conduct. Such injury satisfies section 1964's requirement of injury to "business or property," though it would not satisfy the takings analysis of *Williamson [County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985)].

987 F.2d at 1329. The Court of Appeals noted that although the precise amount of plaintiff's injury is not yet fixed, plaintiff was injured within the context of RICO. Moreover, the Court of Appeals held that defendants' argument that plaintiff failed to reapply for rezoning is more appropriately addressed to the issue of mitigation of damages, as opposed to RICO standing. In sum, the Court of Appeals determined that the application of a *Williamson* taking standard to a civil RICO case involving public corruption "would not be consistent with the purposes of RICO, one of which is to root out public corruption. . . . " *Id.* If it were to adopt the District Court's

narrow view of RICO injury, the Court of Appeals held, "we not only would undermine RICO as a means of rooting out public corruption, but we would provide a formula to those who seek to achieve private gain through corruption of our democratic processes." *Id.* at 1320.

On March 18, 1993, defendants filed a Petition for Rehearing, Including a Suggestion for Rehearing En Banc, in the Court of Appeals. The issues which formed the basis for the Petition for Rehearing were the same as the questions that are presented in the Petition for Writ of Certiorari. By order dated April 22, 1993, the Court of Appeals denied the Petition for Rehearing and the Suggestion for Rehearing En Banc.

By order dated April 29, 1993, the Court of Appeals issued its mandate and this case was sent back to the District Court. Discovery recommenced in June 1993 and, pursuant to a pre-trial schedule approved by the assigned Magistrate Judge, will continue through November 1993. This case will be scheduled for trial in 1994.

REASONS FOR DENYING THE WRIT

I. THE PETITION SHOULD BE DENIED BECAUSE THE EIGHTH CIRCUIT'S OPINION IS CONSISTENT WITH PRINCIPLES ARTICULATED BY THIS COURT AND FOLLOWED BY OTHER CIRCUITS FOR DECIDING WHETHER A RICO PLAINTIFF HAS BEEN "INJURED IN ITS BUSINESS OR PROPERTY."

Defendants, ignoring principles articulated by this Court and by Courts of Appeal, base their Petition on the

contention that the term injury to "business or property," as stated at 18 U.S.C. § 1964(c), requires consideration by this Court. Defendants would have this Court believe that the Eighth Circuit's opinion, in finding plaintiff has alleged RICO injury, rests upon an aberrant standard. To the contrary, defendants asked the Court of Appeals to graft on to the RICO statute a standing requirement that would significantly narrow the statute's reach and undermine its purpose. Recognizing that this Court has rejected any additional standing requirements in RICO cases, *see Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985), the Court of Appeals properly rejected defendants' argument.

The RICO statute, at 18 U.S.C. § 1964(c), provides that a person "injured in his business or property by reason of a violation of section 1962 . . . may sue therefor. . . . " The term "business or property" is not statutorily defined. This Court looks to the Clayton Act, 15 U.S.C. § 15, to interpret RICO. *See Holmes v. Securities Investor Protection Corp.*, ___ U.S. ___, 112 S.Ct. 1311, 117 L.Ed.2d 532 (1992); *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985). Moreover, as this Court has stated, "RICO is to 'be liberally construed to effectuate its remedial purposes.' " *Sedima*, 473 U.S. at 498. "Business or property" is given its ordinary meaning: "The requirement that the injury be to plaintiff's business or property means that the plaintiff must show a proprietary type of damage." *Bankers Trust Co. v. Rhoades*, 741 F.2d 511, 515 (2d Cir. 1984) (dictum), *vacated on other grounds*, 473 U.S. 922, 105 S.Ct. 3550, 87 L.Ed.2d 673 (1985).

Defendants offer no explanation as to how their conduct did not harm plaintiff's business. Plaintiff is in the business of commercial land development. It has submitted evidence in the District Court and the Court of Appeals that it had an agreement with Target and other retailers for development of a shopping center in Eagan. The defendants' illegal conduct caused plaintiff to lose the benefit of its agreements with Target and other retailers and deprived plaintiff of the ability to capitalize on the specific market opportunities presented by the Target agreement in 1987 and 1988. Defendants offer no explanation as to how this conduct did not hurt plaintiff's business.

Defendants focus on the word "property" and argue that plaintiff had to have something akin to a constitutional right to develop its proposed Target-based shopping center before it has standing to bring a RICO claim. There is no such requirement under the RICO statute. Injury to "business or property" merely refers to an economic injury to business interests as opposed to bodily injuries or other personal injuries such as pain and suffering or mental distress. *Grogan v. Platt*, 835 F.2d 844, 846-47 (11th Cir. 1988); *cert. denied*, 488 U.S. 981, 109 S.Ct. 531, 102 L.Ed.2d 562 (1988); *Drake v. B.F. Goodrich Co.*, 782 F.2d 638, 644 (6th Cir. 1986); *Raye v. Medtronic Corp.*, 696 F.Supp. 1273, 1274 (D. Minn. 1988). Courts have not narrowly construed "property" interests as defendants would. *Oscar v. University Students Coop Assn.*, 965 F.2d 783 (9th Cir.), *cert. denied*, ___ U.S. ___, 113 S.Ct. 655, 121 L.Ed.2d 581 (1992) (a month-to-month tenant has sufficient property interest); *Hecht v. Commerce Clearing House,*

Inc., 897 F.2d 21, 24 n.2 (2d Cir. 1990) (employee has sufficient property interest in employment).

Plaintiff was, to be sure, the target of defendants' bribery scheme and associated illegal conduct. Litigants who have been the targets of bribery schemes have routinely been recognized to have suffered injury to their "business or property" and to have standing to assert RICO claims, even where the plaintiff had no absolute right to a contract or business opportunity. For example, in *Environmental Tectonics v. W.S. Kirkpatrick, Inc.*, 847 F.2d 1052 (3d Cir. 1988), *aff'd on other grounds*, 493 U.S. 400, 110 S.Ct. 70, 107 L.Ed.2d 816 (1990), the plaintiff sued a competitor who had bribed foreign officials to obtain a contract. The court held that the plaintiff had anti-trust standing because it suffered injury to its business or property, *id.* at 1066, and finding the questions of RICO standing "somewhat easier to resolve," held plaintiff had RICO standing. *Id.* at 1067. *See also Town of Kearney v. Hudson Meadows Urban Renewal*, 829 F.2d 1263, 1268 (3d Cir. 1987) (developer could bring RICO claim alleging bribery by competitor); *Malley-Duff & Assoc. v. Crown Life Ins. Co.*, 792 F.2d 341 (3d Cir. 1986), *aff'd*, 483 U.S. 143, 107 S.Ct. 2759, 97 L.Ed.2d 121 (1987) (delay, expense, and inconvenience caused by interference with lawsuit was RICO injury); *Miller v. Glen & Helen Aircraft, Inc.*, 777 F.2d 496 (9th Cir. 1985) (intimidation of witness caused depletion in funds available for settlement of lawsuit, constituting RICO injury); *Bankers Trust Co. v. Rhoades*, 741 F.2d 511 (2d Cir. 1984), *vacated on other grounds*, 473 U.S. 922, 105 S.Ct. 3550, 87 L.Ed.2d 673 (1985) (plaintiff stated RICO injury where defendants filed frivolous lawsuits

and bribed presiding judge); *Alcorn County v. U.S. Interstate Suppliers, Inc.*, 731 F.2d 1160 (5th Cir. 1984) (county's overpayment for office supplies resulting from bribery of officials was RICO injury); *Mylan Laboratories, Inc. v. Akzo, N.V.*, 770 F.Supp. 1053, 1083-84 (D. Md. 1991) (RICO injury alleged where defendants bribed officials to speed drug approvals at expense of plaintiff and others).

Defendants attempt, without success, to construct some sort of conflict between the Eighth Circuit's opinion and opinions from other Courts of Appeal. Defendants' reliance on the Eleventh Circuit's decision in *Taffett v. Southern Co.*, 967 F.2d 1483 (11th Cir. 1992), *cert. denied*, 61 U.S.L.W. 3418 (1993), and on the Ninth Circuit's decision in *Oscar v. University Students Coop. Association*, 939 F.2d 808 (9th Cir. 1991), *on rehearing*, 965 F.2d 783 (9th Cir.) (en banc), *cert. denied*, ___ U.S. ___, 113 S.Ct. 655, 121 L.Ed.2d 581 (1992), is misplaced. Neither opinion is in conflict with the Eighth Circuit's opinion here. In *Taffett*, the Eleventh Circuit held that plaintiff utility customers did not have standing to challenge high utility rates. The basis for the court's decision was the "filed rate doctrine," a concept which immunizes the rates established by a public utilities commission and is based on the theory that a remedy to an individual plaintiff is unfair to other utility consumers. *Taffett*, 967 F.2d at 1491. Defendants rely on the panel decision in *Oscar* and, unlike the Eighth Circuit here, ignore the effect of the en banc decision reported at 965 F.2d 783 (9th Cir. 1992). The Ninth Circuit's en banc holding in *Oscar* was that the injury alleged by plaintiffs was akin to a nuisance, which the court analogized to a personal injury, an injury that does not satisfy RICO. *Id.* at 787. As the Eighth Circuit

noted below, "[t]he *Oscar* court's actual rationale – the analogy to personal injury – has no effect on this case, for [plaintiff's] injuries are not due to a neighboring nuisance, but to the defendant's corruption of the zoning process in the City of Eagan." *Bieter Co. v. Blomquist*, 987 F.2d 1319, 1329 n.7 (8th Cir. 1993).

Defendants' arguments based on Minnesota law also do not support their claim that plaintiff has not been injured in its "business or property." Defendants ignore the Minnesota Supreme Court's decision in *Amcon Corp. v. City of Eagan*, 348 N.W.2d 66 (Minn. 1984), in which the court stated that it "has consistently held that administrative remedies need not be pursued if it would be futile to do so." *Id.* at 72. In finding that the Eagan city council prejudged a zoning request, the court held that the plaintiff's failure to exhaust its administrative remedies did not preclude a damage action. Moreover, defendants' reliance on *Property Research and Development Co. v. City of Eagan*, 289 N.W.2d 157 (Minn. 1980), is misplaced. In that case, the court did not hold that the party denied a rezoning was precluded from damage or other remedies, but only that mandamus was an inappropriate remedy. Neither *Amcon*, nor *Property Research*, nor any of the other Minnesota cases cited by defendants suggests that denial of zoning through bribery or other improper means does not result in injury to a plaintiff.

The Eighth Circuit properly rejected defendants' attempts to unnecessarily narrow the reach of the RICO statute and to permit defendants to escape the consequences of their illegal conduct. In doing so, the Eighth Circuit did not expand RICO injury beyond that defined by this Court and other Courts of Appeal. Defendants

have not demonstrated any reason for this Court to grant their Petition with respect to the definition of RICO injury.

II. THE EIGHTH CIRCUIT HAS NOT EXEMPTED PLAINTIFF FROM PROVING INJURY IN ORDER TO OBTAIN AN AWARD OF DAMAGES.

Petitiioners seek to engraft a constitutional takings standard onto plaintiff's RICO claim, relying on this Court's decision in *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985). In *Williamson*, this Court held that a taking claim against the government for violation of due process is not ripe until there is a final administrative action which is judicially reviewable. 473 U.S. at 192. Without this takings standard, defendants assert, plaintiff will not be able to prove injury and the courts will be flooded with RICO land use cases, forcing the federal courts to become super zoning boards of appeal.

The Court of Appeals properly rejected defendants' contentions, and defendants have not demonstrated the Eighth Circuit erred in doing so or created conflict with decisions of this Court or other Courts of Appeal. Moreover, its holding is fact specific, given the situation in which plaintiff found itself as a result of defendants' illegal conduct.

Defendants' reliance on *Williamson* is misplaced, as the Court of Appeals held. *Williamson* rested on the need for a final governmental action rather than on any tort

damage analysis. The standing requirements for constitutional taking cases developed in light of the reluctance of federal courts to sit as a zoning board of appeal. *See Littlefield v. City of Afton*, 785 F.2d 596, 607 (8th Cir. 1986). Federal courts have imposed technical final order and standing requirements in taking cases brought under 42 U.S.C. § 1983 because of their concern "that federal courts not sit as zoning boards of appeals when presented with claims which, although couched in constitutional language, at bottom amount only to the run of the mill dispute between a developer and a town planning agency." *Id.*

In rejecting defendants' *Williamson* argument, the Court of Appeals followed this Court's decision in *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496-97, 105 S.Ct. 3275, 3285, 87 L.Ed.2d 346, 359 (1985), in which this Court rejected additional standing requirements (like that defendants would impose) in civil RICO cases. The Court of Appeals also recognized civil RICO for what it is: "a statutory tort remedy – simply one with particularly drastic remedies." *Bieter Co.*, 987 F.2d at 1329 (quoting *Brandenburg v. Seidel*, 859 F.2d 1179, 1189 (4th Cir. 1988)). Other courts have recognized this distinction. For example, in *Executive 100, Inc. v. Martin County*, 922 F.2d 1536 (11th Cir.), *cert. denied*, ___ U.S. ___, 112 S.Ct. 55, 116 L.Ed.2d 32 (1991), plaintiff brought an action in connection with a county's denial of a request for a zoning change, asserting constitutional taking and tortious interference with prospective advantage claims. The Eleventh Circuit affirmed dismissal of the constitutional taking claims on the grounds that they were not ripe for adjudication because there had not been a final decision, but

held the plaintiff could go forward on its tortious interference claim. *Id.* at 1540-42. No takings ripeness requirement was imposed on the tort claim, even though the claims were based on the same conduct. *See also New Burnham Prairie Homes, Inc. v. Village of Burnham*, 910 F.2d 1474 (7th Cir. 1990) (in case alleging both RICO and 42 U.S.C. § 1983 claims, court required protectible property interest only under § 1983 claim). Moreover, as the Court of Appeals recognized, the analogy between constitutional taking and RICO cases espoused by defendants has not been used by courts to bar bribery-based RICO claims, *see Environmental Tectonics v. W.S. Kirkpatrick, Inc.*, 847 F.2d 1052, 1067 (3d Cir. 1988), *aff'd on other grounds*, 493 U.S. 400, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990), or to close off, without factual inquiry, claims by competing developers in zoning cases. *See HMK Corp. v. Walsey*, 828 F.2d 1071 (4th Cir. 1987), *cert. denied*, 484 U.S. 1009, 108 S.Ct. 706, 98 L.Ed.2d 657 (1988).

Defendants assert that the Court of Appeals is permitting plaintiff to proceed with its case without having a "concrete" injury. This contention is simply wrong. Recognizing RICO as a statutory tort remedy, the Court of Appeals stated that traditional notions of tort damages should apply. Therefore, as the Court of Appeals held, the fact the amount of plaintiff's damages may be subject to dispute does not prevent plaintiff from having a claim. Defendants remain free to question the degree of plaintiff's damages and to assert arguments based on the failure to mitigate and the like. *Bieter Co.*, 987 F.2d at 1329. The Court of Appeals' decision below breaks no new ground in the area of RICO injury, creates no conflict with decisions of this Court or other Courts of Appeal,

and is inherently a fact based issue in an action in which discovery remains on-going.[2]

Defendants ask this Court to grant their Petition because, they contend, the Court of Appeals' opinion will permit the floodgates to open forcing the federal courts to become "super zoning review boards." The Court of Appeals considered, and rightly rejected, this contention. *Bieter Co.*, 987 F.2d at 1330. Comparing this action with *HMK Corp. v. Walsey*, 828 F.2d 1071 (4th Cir. 1987), *cert. denied*, 484 U.S. 1009, 108 S.Ct. 706, 98 L.Ed.2d 657 (1988), and agreeing with the Fourth Circuit, the Court of Appeals here held that civil RICO claims are not appropriately raised in the run of the mill "dogfight between developers." 987 F.2d at 1330. But, as the Fourth Circuit held in *HMK*, not all RICO claims arising in the zoning

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[2] Even if defendants' analogy to takings cases were valid, plaintiff has suffered damages, as the Court of Appeals recognized. If plaintiff had ultimately succeeded in obtaining rezoning of its property – after having initially been rejected, after Target was lured away, and after the Cliff Lake Centre approvals were obtained – the delay suffered by plaintiff and the loss of Target caused by the defendants' illegal conduct resulted in damages to plaintiff. In addition, plaintiff incurred injury in the substantial costs it assumed in preparing for and seeking approvals of its project in the context of corrupted governmental proceedings. Plaintiff's injury has continued through the extra costs it has incurred stemming from the corruption of this litigation through bribery of a witness. Consequently, even if plaintiff could obtain the necessary city approvals, it has lost the unique value of a Target-based shopping center and was denied the ability to propose such a project in time to take advantage of specific market opportunities. Plaintiff has clearly been injured, and the measure of damages is simply one for the jury to decide.

context are barred. Civil RICO does remain available for plaintiffs, like the plaintiff here, who has "alleged pervasive involvement by a developer in the political process through widespread racketeering activity. . . . " *HMK*, 828 F.2d at 1075. That is plaintiff's case. Defendants' parade of horribles was properly rejected by the Court of Appeals.

Contrary to defendants' contentions, the public policy underlying civil RICO supports plaintiff's action. One of the policies underlying RICO is to root out public corruption. *Bieter Co.*, 987 F.2d at 1329. As the Court of Appeals held, were it to accept defendants' arguments, "we not only would undermine RICO as a means of rooting out public corruption, but we would provide a formula to those who seek to achieve private gain through corruption of our democratic processes." *Id.* at 1320.

CONCLUSION

For the above-stated reasons, the petition for a writ of certiorari should be denied.

July 2, 1993.

Respectfully submitted,

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